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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,212	06/07/2001	Lowell Martinson	3755P2332	6074

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EXAMINER
SHAFER, RICKY D

ART UNIT	PAPER NUMBER
2872	

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/875,212	MARTINSON, LOWELL	
	Examiner	Art Unit	
	Ricky D. Shafer	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 June 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22 and 23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22 and 23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/02/2003 has been entered.

2. Applicant's arguments filed 05/06/2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the Araki reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the reference to Araki is clearly in the field of applicant's endeavor, i.e. exterior mounted vehicle mirrors to view a blind spot.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this

case, the references to Mote and Lorenzo each clearly teaches it is well known to mount a mirror in such a manner that said mirror is in optical communication with an existing side view mirror of a vehicle in order to view typical blind spots lateral to a rear portion of a vehicle, which would obviously convey to one of ordinary skill in the art that the mirror of Araki ('163) can be similarly be arranged and/or positioned in such as manner to view blind spots lateral to a rear portion of a vehicle.

Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in anyone or all of the references, rather, the test is what the combined teaching of the references, as a whole, would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 208 U.S.P.Q. 871 (CCPA 1981).

Moreover, one cannot show nonobviousness by attacking the references individually, where the rejection is based on a combination of references. See In re Merck & Co., 800 F. 2d 1091, 231 U.S.P.Q. 375 (FED. CIR. 1986) and In re Keller, 642 F. 2d 413,208 U.S.P.Q. 871 (CCPA 1981).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Araki ('163) in view of Mote ('510) or Lorenzo ('141).

Araki discloses a mirror assembly comprising at least one substantially trapezoidal base portion (1) having a first side, adjacent element (1a), dimensioned to be adhered along a length thereof to a rear side portion of a vehicle and at least one mirror (3) coupled to a second side of said at least one substantially trapezoidal base portion, via element (2), in line of sight with an interior view mirror, note 1-5 along with the associated description thereof, except for the mirror device being adhered to a side rear side portion of the vehicle spaced from the rear of the vehicle and in a line of sight with an existing side view mirror to view objects lateral to the rear portion of the vehicle.

Mote and Lorenzo each teaches it is well known to attach at least one mirror to a side rear side portion of a vehicle spaced from the rear of the vehicle in a line of sight with a typical side view mirror in the same field of endeavor for the purpose of viewing objects lateral to the rear portion of the vehicle. Note Fig. 1 and Fig. 4 to Fig. 8, respectively.

Therefore, it would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to shift the location of the mirror assembly of Araki to a position adjacent the side rear side portion spaced from the rear of the vehicle such that said

mirror is in a line of sight with a typical, existing side view mirror as taught by Mote or Lorenzo in order to view objects lateral to the rear portion of the vehicle, since it has been held that rearranging parts of an invention involves only routine skill in the art. Note In re Japikse, 86 USPQ 70.

As to the limitations of claim 23, Lorenzo clearly teaches employing at least two lateral view mirrors, one of said two lateral view mirrors being positioned on the driver's side in combination with the driver's side view mirror and the other being positioned on the passenger's side in combination with the passenger's side view mirror in the same field of endeavor for the purpose of viewing objects to the right and left lateral sides of a vehicle. Note Figures 4 and 6.

Therefore, it would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to modify the vehicle of Araki to include two lateral view mirrors as taught by Lorenzo in order to view objects to the right and left lateral sides of the vehicle. Note ST. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

Alternatively, it would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to substitute the mirror device, depicted by Fig. 2 or Fig. 3 in the mirror arrangement (Fig. 1) of Mote, or the mirror device, depicted by Fig. 3, Fig.5 or Fig. 7 in the mirror arrangement (Fig.4, Fig. 6 or Fig. 8) of Lorenzo, with a functionally equivalent mirror device of Araki in order to similarly view objects lateral to the rear portion of the vehicle with reduced damage to the vehicle body.

5. Any inquiry concerning this communication should be directed to R.D. Shafer at telephone number (703) 308-4813.

Rds

June 27, 2003

RICKY D. SHAFER
PATENT EXAMINER
ART UNIT 2872